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Supreme Court, U.S.
FILED
MAY 26 1993
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NO. 92-1716

IN THE SUPREME COURT OF

THE UNITED STATES OF AMERICA

OCTOBER TERM, 1992

THE STATE OF TEXAS,
Petitioner

V.

EDWARD ELDON CORLEY,
Respondent

ON PETITION FOR WRIT OF CERTIORARI

TO THE COURT OF CRIMINAL APPEALS

FOR THE STATE OF TEXAS

BRIEF FOR EDWARD ELDON CORLEY IN OPPOSITION

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ATTORNEYS FOR RESPONDENT

QUESTION PRESENTED

WHETHER THE ERRONEOUS INTRODUCTION OF PSYCHIATRIC TESTIMONY IN RESPONDENT'S CAPITAL MURDER TRIAL CONSTITUTES HARMLESS ERROR.

TABLE OF CONTENTS

DESCRIPTION	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINION BELOW	1
STATEMENT OF THE CASE	2
A. Statement of the Facts	2
B. Disposition in the Courts Below	6
SUMMARY OF ARGUMENT	7
REASON FOR DENYING THE WRIT	7
CONCLUSION	16
APPENDIX	18

TABLE OF AUTHORITIES

CASES — **Page**

Buentello v. State, 826 S.W.2d 610 (Tex. Cr. App. 1992) 14, 15

Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967) 7, 8

Corley v. State, 582 S.W.2d 815 (Tex. Crim. App. 1979) 1

Corley v. State, No. 71, 444, slip op. (Tex. Crim. App. Dec. 1992) 2

Dunkins v. State, 838 S.W.2d 898, 901 (Tex.App. - Texarkana 1992) 15

Estelle v. Smith, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981) 8, 15

Fahy v. Connecticut, 375 U.S. 85, 84 S.Ct. 229, 11 L.Ed.2d 171 8

Satterwhite v. State, 486 U.S. 249, 108 S.Ct. 1792, 100 L.Ed.2d 284 (1988) 6-11, 14

CONSTITUTION

United States Constitution, Fifth Amendment 6-8

United States Constitution, Sixth Amendment 6-8

STATUTES AND RULES OF PROCEDURE

Art. 40.03, V.A.C.C.P. 15

TEX.R.APP.PRO. 30(b) 15

Texas Rule of Criminal Procedure 606(b) 14-16

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Now comes EDWARD ELDON CORLEY, Respondent, by and through his Court-appointed attorneys, James W. Knowles and Kenneth H. Crow, and files this, his Brief in Response in Opposition to Petition for Writ of Certiorari, and would show the Court as follows:

OPINION BELOW

The opinion of the Texas Court of Criminal Appeals affirming Respondent's conviction may be found at 582 S.W.2d 815 (Tex. Crim. App. 1979) (Pet. App. 1). Respondent's

conviction was later reversed in Corley v. State, No. 71, 444, slip op. (Tex. Crim. App. Dec. 1992) (Pet. App. 2).

STATEMENT OF THE CASE

A. Statement of the Facts

On September 14, 1974, Vicki Morris was raped and murdered in Smith County, Texas. EDWARD ELDON CORLEY was arrested on the morning of September 17, 1974 (SF 2232). Mr. CORLEY was arraigned September 17, 1974, for plain murder, by a Panola County, Texas, magistrate. On said date, Curtis Owen, the Smith County District Attorney, did not inform Mr. CORLEY what he had been charged with and that, if found guilty, he could be punished by death (SF 107, 2439-2441). This is obvious since Mr. CORLEY had not been charged with a capital offense at that time. On the same date, without benefit of counsel, Mr. CORLEY, who has an IQ of 71, signed a written confession which was admitted over objection into evidence at trial (SF 2718-2719, 2387). This confession described the crime of plain murder, a noncapital offense.

On the very day that Mr. CORLEY was arrested, Mr. Curtis Owen contacted Dr. Tynus McNeel, a psychiatrist, to interview Mr. CORLEY (SF 2703). Dr. McNeel first interviewed Mr. CORLEY on September 18, 1974, and evaluated Mr. CORLEY's competency as well as his sanity (SF 2702). On November 1, 1974, approximately six (6) weeks after Mr. CORLEY's arrest, a second confession was taken in regard to the crime of rape committed in conjunction with the crime of murder (SF 2420-2423). Since September 17, 1974, Mr. CORLEY had been

incarcerated without benefit of counsel. Mr. CORLEY was then indicted for capital murder for which he was tried, and the undersigned was appointed to represent Mr. CORLEY.

Dr. McNeel again examined Mr. CORLEY on April 2, 1975, five (5) days prior to the competency hearing. The third examination conducted by Dr. McNeel occurred on or about October 16, 1975, shortly before trial commenced. Dr. James Grigson also conducted a psychiatric examination of Mr. CORLEY shortly before trial, on October 10, 1975 (SF 2732). Mr. CORLEY was tried and found guilty of murder. Dr. McNeel and Dr. Grigson testified at the penalty phase as to Mr. CORLEY's future dangerousness. They were the only licensed physicians to testify for either side at the penalty phase. The jury answered questions sentencing Mr. CORLEY to death.

In its Statement of the Facts, the State makes several misleading statements. The State points out on Page 5, Footnote 3, of its Petition that Dr. McNeel advised Mr. CORLEY of his rights. This is incorrect. Dr. McNeel did not warn Mr. CORLEY at any of the three interviews that statements he made at the psychiatric interview could be used to form the basis for predictions of future dangerousness. (SF 2707; SF Writ hearing 70, 71, 74, 112, 113).

In addition, the State points out that Dr. McNeel testified at the Writ of Habeas Corpus hearing that his opinion that Mr. CORLEY is a sociopath was formed during the initial interview with subsequent interviews merely confirming his findings (Pet. for Writ of Cert. Page 6, Footnote 4). Mr. CORLEY has maintained at all times that this is incorrect.[1] As testified by Dr. McNeel at the sanity hearing, the purpose of the first interview was twofold: to establish

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[1]The State vigorously attempted to validate the first McNeel interview inasmuch as it is undisputed that Mr. CORLEY's Fifth and Sixth Amendment rights were clearly violated at the latter two McNeel interviews, as well as at the Grigson interview.

his opinion of competency and sanity (SF Proceedings on Defendant's Motions 476).[2] Dr. McNeel went on to testify that he had a four purpose objective of the examination: Mr. CORLEY's competency at the time of the offense; competency at present; sanity at the time of the offense; and sanity at present (SF Proceedings on Defendant's Motions 480). It should be noted that, at the time of the first examination, Mr. CORLEY was charged with plain murder, a noncapital offense in the State of Texas, and the purpose of the examination was certainly not to determine future dangerousness. As such, it is inconceivable that Dr. McNeel gave any warnings to Mr. CORLEY to the effect that anything he said might be used against him at a sentencing proceeding with the possible imposition of a death sentence.

More importantly, Dr. McNeel testified at the present sanity hearing that he was not interested in making a diagnosis and that he did not make a diagnosis (SF Proceedings on Defendant's Motions 481-482). Dr. McNeel has testified against Mr. CORLEY on three different issues: insanity, competency, and future dangerousness. Dr. McNeel now claims that the first interview was the one that he used as a basis for all these conclusions (although the record does not support this) and that the latter two interviews were only to confirm his previously obtained opinions and diagnosis. Yet, the record contains the following testimony taken at the present sanity hearing when he had conducted only two examinations of Mr. CORLEY:

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[2]Respondent's Statement of Facts contains two volumes marked "2." "Proceedings on Defendant's Motions" refers to Volume II - Proceedings on Defendant's Motions re: 34.04, 35.15, 35.17, and 45.02 and Hearing on Present Sanity of Defendant had in Smith County, Texas, beginning April 7, 1975.

Q: Dr. McNeel . . . you say you did find evidences of personality problems and things that, in your profession . . . that you would consider as some sort of defect. Isn't that correct?

A: Problem area, yes, sir.

Q. Problem area. And regardless of the fact that those, you just did not feel it necessary to pursue those at all, or mention them, or bring them up at all?

A: That really wasn't what I was asked to do. And at the same time, had I been asked to make a psychiatric evaluation and diagnosis, then much of my interview would have been pursued along different areas. And I think family history probably would have been important from family members at that time. Also, perhaps, Psychological Testing might be important, had I been interested in a diagnosis or a personality type diagnosis, for example. But this was not what I was looking for (SF Proceedings on Defendant's Motions 481).

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Q: And you stated there that you were not asked to make a diagnosis?

A: That is my understanding; yes.

Q: So, you made no diagnosis?

A: Yes. Not from the standpoint of medical diagnosis. I rendered an opinion in terms of the person's sanity and competency (SF Proceedings on Defendant's Motions 482).

Dr. McNeel has since "diagnosed" and labeled Mr. CORLEY as a sociopath. It is clear from the record that he made no conclusion or diagnosis based on the first two interviews. The diagnosis of sociopath and the opinion as to Mr. CORLEY's propensity to future dangerousness could only have been derived, as shown from the record, from the information gathered from all three interviews combined, or the last interview.

Mr. CORLEY's counsel were not notified of any of the psychiatric interviews. It is undisputed that Mr. CORLEY was never told at any of the interviews that the doctors were

gathering evidence necessary to decide whether, if convicted, he should be sentenced to death.

The Texas Court of Criminal Appeals ruled that the interviews conducted by Drs. McNeel and Grigson violated Mr. CORLEY's Fifth and Sixth Amendment rights inasmuch as Mr. CORLEY was not advised that his statements could be used against him at the punishment phase of his trial and his counsel was not notified of the psychiatric interviews.

B. Disposition in the Courts Below

The State now concedes that the admission of the testimony of Drs. McNeel and Grigson at the penalty phase of Mr. CORLEY's trial violated Mr. CORLEY's Fifth and Sixth Amendment rights. This issue was submitted to the Texas Court of Criminal Appeals by virtue of a Petition for Writ of Habeas Corpus by a Person in State Custody filed October 15, 1986. In response, the Texas Court of Criminal Appeals directed the trial court to conduct an evidentiary hearing in regard to Mr. CORLEY's allegations of constitutional violations in regard to the doctors' testimony. This hearing was held, and the trial court submitted Findings of Fact and Conclusions of Law which were filed June 8, 1992. The Texas Court of Criminal Appeals, after reviewing the trial court's Findings of Fact and Conclusions of Law, reversed Mr. CORLEY's conviction and remanded Mr. CORLEY to the custody of the Sheriff of Smith County to answer the indictment. The State filed a Motion for Rehearing on the specific point that the Texas Court of Criminal Appeals failed to consider whether Drs. McNeel's and Grigson's testimony on future dangerousness was harmful error under Satterwhite v. State, 486 U.S. 249, 108 S.Ct. 1792, 100 L.Ed.2d 284 (1988). The Motion for Rehearing was denied.

SUMMARY OF ARGUMENT

The Texas Court of Criminal Appeals determined that Mr. CORLEY's Fifth and Sixth Amendment rights were violated by the State's introduction of testimony from Dr. Grigson and Dr. McNeel at the punishment phase of his trial and accordingly vacated his death sentence (Pet. App. 2). As such, by implication, the Texas Court of Criminal Appeals must have determined that the error was harmful and reversible. In any event, applying the harmless error doctrine of Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967) and the Satterwhite case, the error committed in the penalty phase of Mr. CORLEY's trial was most certainly harmful error.

REASON FOR DENYING THE WRIT

THE TEXAS COURT OF CRIMINAL APPEALS DID NOT FAIL TO CONSIDER WHETHER THE PSYCHIATRIC TESTIMONY ON FUTURE DANGEROUSNESS WAS HARMLESS ERROR UNDER SATTERWHITE V. STATE.

The Texas Court of Criminal Appeals specifically ruled that Mr. CORLEY's Fifth and Sixth Amendment rights were violated by the introduction of testimony from Dr. Grigson and Dr. McNeel inasmuch as such testimony was based on information gained from interviews with Mr. CORLEY at which Mr. CORLEY did not receive the appropriate Fifth Amendment warnings, in addition to the fact that Mr. CORLEY's counsel were not notified of the interviews. The State filed a Motion for Rehearing raising the point that there was no holding that the error was not harmless in accordance with the Chapman and Satterwhite cases. The Motion for Rehearing was denied. It is clear that the Texas Court of Criminal Appeals, when reviewing the trial court's Findings of Fact and Conclusions of Law in regard to Mr.

CORLEY's Fifth and Sixth Amendment complaints as connected with the testimony of the psychiatrists, found the error harmful. By applying the Chapman and Satterwhite analysis to the facts of this case, the admission of the psychiatrists' testimony was clearly harmful.

In Estelle v. Smith, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981), this Court held that a capital defendant's Fifth Amendment right against compelled self-incrimination precludes the state from subjecting him to a psychiatric examination concerning future dangerousness without first informing the defendant that he has a right to remain silent and that anything he says can be used against him at a sentencing proceeding. Id. at 461-469. Once a capital defendant is formally charged, the Sixth Amendment right to counsel precludes such an examination without first notifying counsel that "the psychiatric examination (will) encompass the issue of their client's future dangerousness." Id. at 471. This Court has also held that the Chapman harmless error rule applies to the admission of psychiatric testimony in violation of the Sixth Amendment right set out in Estelle. Satterwhite, 486 U.S. at 258.

The Chapman Court quoted the case of Fahy v. Connecticut, 375 U.S. 85, 84 S.Ct. 229, 11 L.Ed.2d 171 (1963), when it said: "The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction." Chapman, 386 U.S. at 23 (emphasis added). Before a federal constitutional error can be held harmless, the Court must be able to declare a belief that it was harmless beyond a reasonable doubt. Id. at 24. This burden is borne by the beneficiary of the constitutional error. As such, the State must prove beyond a reasonable doubt that the admission of the psychiatric testimony at the penalty phase of Mr. CORLEY's capital murder trial did not contribute to the verdict obtained.

The State argues: "The evidence properly admitted during the trial renders the admission of psychiatric evidence 'harmless error'." (Pet. for Writ of Cert. 10). The State cites as support for this statement a number of cases that raise the question of sufficiency of the evidence. This is not the correct test for harmless error and goes directly against the Satterwhite case. This Court held in Satterwhite, that the question is not "whether the legally admitted evidence was sufficient to support the death sentence, which we assume it was, but rather, whether the State has proved 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" Satterwhite, 486 U.S. at 258-259.

In support of its argument that the psychiatric testimony was merely cumulative, the State argues that the crime was brutal and callous and that fact alone supports a death sentence. The State claims that, as a result, the jury "most likely" did not place "great significance" on the testimony of the psychiatrists (Pet. for Writ of Cert. 12). Taking Petitioner's argument on face value, if such was the case, any constitutional error in a capital case would be harmless since capital crimes are per se brutal and callous. The burden the State bears is not whether the jury most likely did not place great significance on the testimony of the psychiatrists but whether, beyond a reasonable doubt, the psychiatric testimony did not contribute to the verdict obtained.

In Satterwhite, the Court, relying on the significant weight the prosecutor placed on the testimony of Dr. Grigson, held that the State did not prove beyond a reasonable doubt that the testimony did not contribute to the verdict. Id. at 260. The State argues that in this case it did not emphasize the testimony of the psychiatrists to the jury in summation, and, as such, the testimony did not taint the verdict. The State attempts to distinguish this case from Satterwhite by pointing out that the Satterwhite prosecutor emphasized Dr. Grigson's testimony and repeated

the word "sociopath" several times during argument. The State then makes reference to the number of times Mr. CORLEY's prosecutor referred to the psychiatrists in its summation during the guilt/innocence phase. This is irrelevant inasmuch as both psychiatrists had testified at that point only as to competency. The errors occurred during the punishment phase.

During the punishment phase of Mr. CORLEY's trial, the State points out that Dr. Grigson was only mentioned four times, and Dr. McNeel was only mentioned once. A review of the Satterwhite case and the Statement of Facts in this case shows that Mr. CORLEY's prosecutor went even farther than the Satterwhite prosecutor. In Satterwhite, the evidence introduced at sentencing showed four prior convictions of crimes ranging from aggravated assault to armed robbery. A police officer testified that Satterwhite's reputation for being a peaceful and law-abiding citizen was bad, and Satterwhite's mother's former husband testified that Satterwhite once shot him during an argument. The State also introduced the testimony of a Bexar County psychologist Betty Lou Schroeder, who testified that Satterwhite was a "cunning individual" and a "user of people," with an inability to feel empathy or guilt. She testified that in her opinion Satterwhite would be a continuing threat to society through acts of criminal violence. Id. at 259. The final witness for the State was Dr. Grigson. This Court pointed out:

> His testimony stands out because of his qualifications as a medical doctor specializing in psychiatry and because of the powerful content of his message. Dr. Grigson was the only licensed physician to take the stand. He informed the jury of his educational background and experience, which included teaching psychiatry at a Dallas medical school and practicing psychiatry for over twelve years. He stated unequivocally that, in his expert opinion, Satterwhite "will present a continuing threat to society by continuing acts of violence." He explained that Satterwhite has "a lack of conscience" and is "as severe a sociopath as you can be." . . . Dr. Grigson concluded his testimony on direct examination with perhaps his most devastating opinion of all: he told the jury that Satterwhite was beyond the reach of psychiatric rehabilitation. Id. at 259-260.

This Court went on to discuss how the District Attorney had highlighted Dr. Grigson's credentials and conclusions in his closing argument, quoting the District Attorney:

> Dr. James Grigson, Dallas psychiatrist and medical doctor. And he tells you that on a range from one to ten he's ten plus. Severe sociopath. Extremely dangerous. A continuing threat to our society. Can it be cured? Well, it's not a disease. It's not an illness. That's his personality. That's John T. Satterwhite. Id. at 260.

Based on the above quote from the District Attorney's closing argument, this Court noted that the prosecution placed significant weight on Dr. Grigson's powerful and unequivocal testimony. After reviewing the evidence, this Court found it impossible to say beyond a reasonable doubt that Dr. Grigson's expert testimony on the issue of Satterwhite's future dangerousness did not influence the sentencing jury.

At the Corley punishment phase, eleven individuals, composed of law enforcement officers, a district attorney, and private citizens, testified at the sentencing hearing that Mr. CORLEY's reputation for being a peaceful and law-abiding citizen was bad. The State also introduced, at the punishment phase, the testimony of psychiatrists, Dr. Tynus McNeel and Dr. James P. Grigson. Both psychiatrists informed the jury of their qualifications and testified as to future dangerousness. Dr. Tynus McNeel previously testified at the guilt/innocence phase that he was a licensed medical doctor specializing in psychiatry for the last eleven years; that he had obtained an undergraduate degree from the University of Texas, a medical degree from the University of Texas Medical School in Galveston, and had completed a year's internship in Florida and a three year residency training in psychiatry at the University of Texas Medical School at John Sealy Hospital in Galveston. He also testified that he was a member of the Texas Medical Association and the American Psychiatric Association and was board certified as a

specialist in psychiatry by the American Specialty Board of Psychiatry (SF 2701-2702). Dr. Grigson informed the jury at the guilt/innocence phase that he had been in private practice for 8½ to nine years; that he had obtained a medical degree from Southwestern Medical School, and completed a year's internship at Baylor Medical Center, and a three year psychiatric residency training at Timberlawn Hospital and Parkland Hospital. He also testified that he had taught at Southwestern Medical School for 4½ years and that he had been a consultant to Terrell State Hospital, Texas Women's University Health Center, and the Dallas County Health Department. Dr. Grigson further testified that he was certified by the American Board of Neurology and Psychology (SF 2728-2729).

Dr. McNeel testified at the punishment phase that:

a. Mr. CORLEY showed strong traits of sociopathic type personality disorder;

b. There is no treatment for this disorder, and

c. There is a probability Mr. CORLEY would commit future crimes that would constitute a continual threat to society (SF 2861, 2862, 2864).

Dr. Grigson testified at the punishment phase that:

a. Mr. CORLEY is a severe sociopath;

b. Mr. CORLEY is as severe a sociopath as can be found;

c. Mr. CORLEY has no conscience;

d. There is no treatment for this condition;

e. He was 100% sure that Mr. CORLEY would commit future crimes;

f. Mr. CORLEY will continue to do what he has done in the past--the numbers will just get worse;

g. Mr. CORLEY is a continuing threat to society; and

h. Mr. CORLEY is comparable to a malignant cancer on society that had to be destroyed (SF 2868, 2875, 2876, 2879, 2885).

The prosecution highlighted Dr. Grigson's and Dr. McNeel's opinions in closing argument:

> Now, Dr. Grigson testified about a sociopath. He doesn't learn from his mistakes, he has no conscience, and he will get worse. Only, Dr. Grigson said, well, Mr. Corley probably won't get any worse, because he can't get any worse. Killing is about as bad as you can get (SF 2907).
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> • • • • • • • • • • • • •
>
> Now, we had this evidence, and we had Dr. McNeel, who testified that he found that the Defendant had very little value for other persons, very little value for the law, very little value for telling the truth, and altogether, no moral values (SF 2908).
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> • • • • • • • • • • • • •
>
> Then, there was the testimony of Dr. Grigson, who testified that the Defendant suffered from an antisocial personality disorder. No, it's not a mental illness, it's not a mental disease; it is just a personality disorder. If he didn't have it quite so bad, he might be just mean, but he is way, way beyond being just mean. . . It's not a disease or an illness, or a sickness. But, as Dr. Grigson said, it is a cancer--it is a malignancy, and there is nothing that you can do for it but just cut it out. Because wherever that person lives and exists, he will have the same personality. He will be subject to the same values that he has always been subjected to. He has no conscience, he has no regard for others, he is just a manipulator (SF 2908-2909).
>
> • • • • • • • • • • • • •
>
> You heard Dr. Grigson's testimony, there is no way that he can be treated; he doesn't learn from experience; no conscience; a manipulator; the most severe sociopath you can find (SF 2940).

As is clear from the above, the prosecutor in Mr. CORLEY's case stressed the psychiatrists' testimony even more than the prosecutor in the Satterwhite case. There is no merit to the State's argument that the psychiatrists' testimony was not emphasized. Mr. CORLEY agrees with the State that mental health experts are not necessary to sustain a conviction in a capital case. However, the State chose to put forth two licensed physicians who referred to Mr. CORLEY on numerous occasions as a sociopath and a malignancy on society with no hope of improvement or rehabilitation. It is not possible that the licensed physicians' testimony did not influence or contribute to the jury's verdict in this matter. One cannot put licensed physicians on the stand who testify that an individual is a malignant cancer on society that has to be destroyed and then argue that such virulent testimony did not contribute or influence the jury in the verdict obtained.

At the writ hearing, Clara Cole, a juror from the 1975 trial, testified that the complained of testimony did not play a part in the decision to find in the affirmative the special issues necessary for Mr. CORLEY to receive the death penalty (SF Writ Hearing 91). The juror's testimony was allowed over Respondent's strenuous objection (SF Writ Hearing 84-87, 91, 92). Respondent's counsel based their objection on Texas Rule of Criminal Procedure 606(b). Rule 606(b) provides in pertinent part as follows:

> Upon an inquiry into the validity of a verdict . . . a juror may not testify as to any matter or statement occurring during the course of the jury's deliberation or to the effect of anything upon that or any other juror's mind or emotion as influencing him to assent to or dissent from the verdict . . . or concerning his mental processes in connection therewith . . . except that a juror may testify as to any matter relevant to the validity of the verdict. . . . (App. 1)

The most recent discussion of Texas Rule of Criminal Procedure 606(b) is found in Buentello v. State, 826 S.W.2d 610 (Tex.Cr.App. 1992). The Texas Court of Criminal Appeals

held in Buentello that the test for admission of juror testimony at a hearing on a motion for new trial is whether the matter sought to be elicited is deemed by the trial court to be relevant to the validity of the verdict. What is considered "relevant" will be determined on a case-by-case basis, taking into account the court's experiences and observations, the grounds for a new trial set forth in TEX.R.APP.PRO. 30(b), and the case law which was developed under the predecessor to 30(b), Art. 40.03, V.A.C.C.P. Id. at 614. As discussed in Buentello, prior to that decision, many Texas cases held that "relevant" meant conduct constituting an "overt act." Id. at 613-14. In fact, although the Buentello court urges the courts to utilize previous case law in their case-by-case analysis, there are no cases allowing a motion for new trial based on the thoughts of a single juror, unexpressed in the jury room and not the result of inappropriate contact with someone or something outside the jury room. Dunkins v. State, 838 S.W.2d 898, 901 (Tex.App. - Texarkana 1992). In other words, a juror's subjective motivation for voting a certain way is not a matter that affects the validity of the verdict unless that motivation is produced by one of the items listed in § 30(b). (App. 2) Such is not the case in this situation.

The Buentello holding is limited to a motion for new trial scenario, and its analysis is only applied in later cases in regard to a motion for new trial. Obviously, this is because a juror is much more competent to testify to his mental processes, if deemed relevant, within thirty days of trial as opposed to the twenty year lapse of time we have in this case. Furthermore, to apply the Buentello analysis of Rule 606(b) to an Estelle situation is inappropriate. The purpose of disallowing jurors to testify as to their mental process in reaching a verdict is to promote freedom of deliberations, stability and finality of verdicts, and protection of jurors against annoyance and embarrassment. Such factors should be given great weight in a capital case.

In any event, even if this Court saw fit to rely on Ms. Cole's testimony that the psychiatrists' testimony had no effect on her verdict, that leaves eleven (11) other jurors mental processes unaccounted for. While Respondent strenuously objects to the State's attempt to prove the error was harmless by introducing evidence in direct contravention of Rule 606(b), if it is to be allowed, then it would be necessary for all twelve (12) jurors to testify as to their mental processes. This was not done at the evidentiary hearing. As such, the constitutional errors complained of above amount to reversible errors because the State failed to prove beyond a reasonable doubt that the errors did not contribute to the verdict obtained.

The State complains on various occasions that, because of the constitutional violations, unless this Court grants review and reverses the Texas Court of Criminal Appeals, the State must retry Mr. CORLEY and such a result is unreasonable. Of course, if the State had not violated Mr. CORLEY's constitutional rights during his capital murder trial, this would not be necessary. If the Court is looking at unreasonable results, the most unreasonable result of the constitutional violations was the invalid incarceration of Mr. CORLEY on death row for almost twenty years.

CONCLUSION

For the reasons stated herein, the Writ of Certiorari should be denied in this case.

RESPECTFULLY SUBMITTED,

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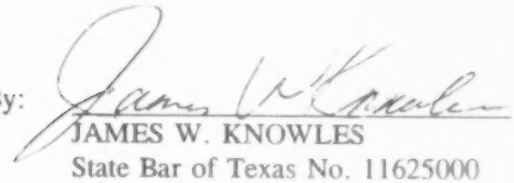
By: 
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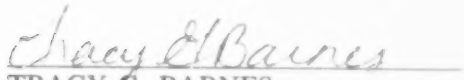
By: 
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APPENDIX 1

Rule 606. Competency of Juror as a Witness

(b) **Inquiry into validity of verdict or indictment.** Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify as to any matter relevant to the validity of the verdict or indictment. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

APPENDIX 2

RULE 30. DEFINITIONS AND GROUNDS

(b) Grounds. A new trial shall be granted an accused for the following reasons:

(1) Except in a misdemeanor case when maximum punishment may be by fine only, where the accused is an individual who has been tried in his absence, unless otherwise authorized by law, or has been denied counsel;

(2) Where the court has misdirected the jury as to the law or has committed some other material error calculated to injure the rights of the accused;

(3) Where the verdict has been decided by lot or in any other manner than by a fair expression of opinion by the jurors;

(4) Where a juror has received a bribe to convict or has been guilty of any other corrupt conduct;

(5) Where any material witness of the defendant has by force, threats or fraud been prevented from attending the court, or where any evidence tending to establish the innocence of the accused has been intentionally destroyed or withheld preventing its production at trial;

(6) Where new evidence favorable to the accused has been discovered since trial;

(7) Where after retiring to deliberate the jury has received other evidence; or where a juror has conversed with any other person in regard to the case; or where a juror became so intoxicated as to render it probable that his verdict was influenced thereby;

(8) Where the court finds the jury has engaged in such misconduct that the accused has not received a fair and impartial trial; and

(9) Where the verdict is contrary to the law and evidence.

(Adopted by Supreme Court and Court of Criminal Appeals effective Sept. 1, 1986.)